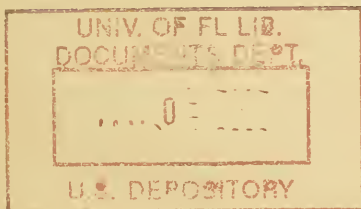


NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO
CODE OF FAIR COMPETITION
FOR THE
CONSTRUCTION MACHINERY
DISTRIBUTING TRADE

AS APPROVED ON JUNE 23, 1934



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1934

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Approved Code No. 223—Amendment No. 1

AMENDMENT TO CODE OF FAIR COMPETITION
FOR THE
CONSTRUCTION MACHINERY DISTRIBUTING
TRADE

As Approved on June 23, 1934

ORDER

APPROVING AMENDMENTS TO THE CODE OF FAIR COMPETITION FOR THE
CONSTRUCTION MACHINERY DISTRIBUTING TRADE

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of amendments to a Code of Fair Competition for the Construction Machinery Distributing Trade, and hearings having been duly held thereon and the annexed report on said amendments, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise; do hereby incorporate, by reference, said annexed report and do find that said amendments and the Code as constituted after being amended comply in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and do hereby order that said amendments be and they are hereby approved, and that the previous approval of said Code is hereby modified to include an approval of said Code in its entirety as amended, such approval and such amendments to take effect fifteen days from the date hereof, unless good cause to the contrary is shown to the Administrator before that time and the Administrator issues a subsequent order to that effect.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

BARTON W. MURRAY,
Acting Division Administrator.

WASHINGTON, D.C.,
June 23, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the amendments to the Code of Fair Competition for the Construction Machinery Distributing Trade, as revised after a Public Hearing conducted in Washington on May 11, 1934, in accordance with Article X, Section 1 of said Code as approved on January 23, 1934.

The amendments which clarify the definition of the Trade and pertain to procedure of the Code Authority will improve and simplify the operation of this Code.

FINDINGS

The Deputy Administrator in his final report to me on said amendments to said Code having found as herein set forth and on the basis of all the proceedings in this matter:

I find that:

(a) The amendments to said Code and the Code as amended are well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including the removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof, and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanction and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said Trade normally employs not more than 50,000 employees, and is not classified by me as a major Trade.

(c) The Code as amended complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof.

(d) The Code Authority, duly authorized to represent the Trade, has applied for and assents to these amendments.

(e) The amendments and the Code as amended are not designed to and will not permit monopolies or monopolistic practices.

(f) The amendments and the Code as amended are not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(g) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said amendments.

For these reasons, these amendments have been approved by me. subject to a fifteen day stay and opportunity to be heard by all affected persons.

Respectfully,

HUGH S. JOHNSON,
Administrator.

JUNE 23, 1934.

AMENDMENT TO CODE OF FAIR COMPETITION FOR THE CONSTRUCTION MACHINERY DISTRIBUTING TRADE

PURPOSE

Pursuant to Article X, Section 2, of the Code of Fair Competition for the Construction Machinery Distributing Trade, duly approved by the President on January 23, 1934, and further to effectuate the policies of Title I of the National Industrial Recovery Act, the following amendments are established as a part of said Code of Fair Competition and shall be binding upon every member of the Construction Machinery Distributing Trade.

ARTICLE II—DEFINITIONS

The first paragraph is hereby amended to read as follows:

"The term 'Construction Machinery' or 'Machinery', as used herein, shall include any new and/or used machinery, equipment, or attachments used in the construction or maintenance of any project, but not becoming a permanent part of the structure or of its operation."

The second paragraph is hereby amended to read as follows:

"The term 'Construction Machinery Distributor', or 'Distributor', as used herein, shall include any person other than a manufacturer (except manufacturers who assent for any part of the items included in this Trade), but without limitation, who warehouses, sells, rents, or distributes Construction Machinery as hereinabove defined."

ARTICLE VI—ADMINISTRATION

Section 3: Sub-section (b) is hereby deleted.

Section 2: There is hereby added at the end of Section 2, a new section numbered Sec. 2A, to read as follows:

"Members of the Trade who warehouse, sell or distribute Used Machinery may, if they desire, elect one additional member of the Code Authority in any fair manner approved by the Administrator."

There is hereby added at the end of Article VI, a new Section, to be numbered 9, to read as follows:

"Sec. 9, *Assessments*.—A. It being found necessary in order to support the administration of this Code and to maintain the standards of fair competition established hereunder and to effectuate the policy of the Act, the Code Authority is authorized, subject to the approval of the Administrator:

"(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of

funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the Code;

“(b) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the Trade;

“(c) After such budget and basis of contribution have been approved by the Administrator, to determine and obtain equitable contribution as above set forth by all members of the Trade, and to that end, if necessary, to institute legal proceedings therefor in its own name.

“B. Each member of the Trade shall pay to the extent of the volume of his or its business under this Code, his or its equitable contribution to the expenses of the maintenance of the Code Authority, determined as hereinabove provided, and subject to rules and regulations pertaining thereto, issued by the Administrator. Only members of the Trade complying with the Code and contributing to the expenses of its administration as hereinabove provided, shall be entitled to participate in the selection of members of the Code Authority or to receive the benefits of any of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

“C. The Code Authority shall neither incur nor pay any obligation in excess of the amount thereof as estimated in its approved budget, except upon approval of the Administrator; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the Administrator shall have so approved.”

ARTICLE VII.—TRADE PRACTICES

Section 1 is hereby amended to read as follows:

“SEC. 1. Inducing or attempting to induce a breach of commercial contract to which a member of the Trade is a party.”

Section 2 is hereby deleted and a new Section 2 is hereby added to read as follows:

“SEC. 2. *Renting below list price.*—No member of the Trade shall rent or offer to rent any machinery, attachments, or equipment at a price lower or on terms more favorable than those stated in his published price list, or price lists, with discount sheets, if any, filed in accordance with Article IX.”

Section 3 is hereby amended to read as follows:

“SEC. 3. Paying or allowing secret rebates, refunds, unearned discounts or credits, either in the form of money or otherwise, or secretly extending to certain customers special services or privileges not extended to all customers of the same class on like terms or conditions.”

Section 4 is hereby amended to read as follows:

“SEC. 4. Paying or agreeing to pay, directly or indirectly, a commission or consideration of any kind, except to persons regularly employed in the distributor's organization or to regularly established subdealers; provided, however, that nothing in this Section 4 shall be construed to prevent the allowance of discounts to customers as

prescribed in the distributor's published price lists and discount sheet."

The proviso in Section 6 is hereby amended to read as follows:

"*Provided, however,* That damaged, obsolete, noncurrent, and distress construction machinery, attachments or equipment may be sold at such prices as are necessary to move the goods into buyers' hands, but as to new machinery only after filing with the Code Authority at least ten (10) days in advance of such sale a list showing the quantity and description of such machinery."

Section 12 is hereby amended to read as follows:

"SEC. 12. Quoting delivered prices on new machinery or invoicing purchaser without adding, to the f.o.b. factory price, transportation and other charges, and failing to state in quotation, where freight is to be prepaid, that such prepaid freight will be charged as a separate item and billed net cash."

The following new sections are hereby added:

"SEC. 18. Renting used machinery, equipment, or attachments with an option to purchase, with full application of the rentals upon the purchase price, except upon the following conditions:

"(a) Sale value shall be stated in the contract.

"(b) Said option shall not be for a longer period than thirty (30) days from date of delivery.

"(c) The terms of payment of the purchase price, in the event of exercise of the option, shall conform to Section (2) of this Article VII.

"SEC. 19. In the event of a sale of used machinery, equipment, or attachments during or at the expiration of a lease period or any extension thereof, other than a sale upon option as hereinbefore provided, allowing as partial payment of the fair purchase price, more than certain percentages of the rentals paid or accrued: such percentages to be determined by the Code Authority for regional areas with the approval of the Administrator.

"SEC. 20. Having any rental arrangement except as evidenced by signed agreement or lease.

"SEC. 21. Renting any machinery upon any agreement unless it shall provide in all cases that the rental charges shall start from the date of delivery from, and continue to the date of return to, lessor's warehouse, (except that in the case of shipments by public carrier, the rental period shall be from date of bill-of-lading to date of bill-of-lading), actual transportation charges to be paid by lessee in all cases.

"SEC. 22. Selling any machinery under any promise or agreement to repurchase the same.

"SEC. 23. Renting machinery for an indefinite period of time such as the duration of a job, for a lump sum or maximum rental which is less than the price list, or price lists and discount sheets, as filed in accordance with Article IX."

ARTICLE IX—PUBLICITY OF PRICES

Section 1 is hereby amended to read as follows:

"SEC. 1. Each member of the Trade shall within thirty (30) days after the effective date of this Code file with the Code Authority copies of his price lists, with discount sheets, if any, showing prices

for all new machinery, attachments, and equipment which said member sells. Each member of the Trade shall within thirty (30) days after the effective date of this amendment file with the Code Authority a complete schedule of his rental prices based upon units of time. Each member of the Trade shall at all times file and maintain with the Code Authority price lists, with discount sheets, if any, showing prices of all new machinery, attachments, and equipment and all rental schedules, and shall not make any change in said prices except by filing notice of such price changes as hereinafter provided."

There is hereby added a new Section to be numbered 4 and to read as follows:

"SEC. 4. Lists and discount sheets filed with the Code Authority shall be available for the inspection of all members of the Trade and all other interested parties, and copies thereof shall be furnished by the Code Authority to all who agree to pay their pro-rata share of the cost of the actual additional expense of such enlarged circulation."

Section 4 is hereby amended by renumbering it so that it becomes Section 5.

EFFECTIVE DATE

The foregoing amendments shall become effective on the date of approval hereof.

Approved Code No. 223—Amendment No. 1.
Registry No. 1399-17.





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